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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,260	12/22/2003	Eric C. Steindorf	KCX-771 (19263)	4463
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/743,260	Applicant(s) STEINDORF, ERIC C.	
	Examiner NIHIR PATEL	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment filed on 02/22/2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 11, 14, 17-19, 21-24, 26 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10, 12, 13, 15, 16, 20 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims **1-3, 5, 10, 12, 13, 20 and 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Baumann et al. (US 6,354,296) in view of Jackson (US 3490,447).

5. **As to claim 1**, Baumann substantially discloses an apparatus that comprises a body portion **22** configured to be placed over a mouth and at least part of a nose of a user in order to isolate the mouth and the at least part of the nose of the user from the environment (**see fig. 3**) such that the air of respiration is drawn through the body portion (**see fig. 10b, col. 7 lines 35-43**) and having an outer and an inner surface with a plurality of projections extending from at least

Art Unit: 3772

one of the outer and inner surfaces that define a plurality of channels on the baffle layer configured for channeling fluid to different locations on the baffle layer (**see col. 4 lines 45-55**), the baffle layer configured to aid in absorbing energy associated with fluid striking the body portion and to prevent fluid strike through (**see col. 4 lines 45-55**) but does not disclose the body portion having a baffle layer configured to cover the user's mouth and at least part of the user's nose. Jackson discloses an apparatus that does disclose the body portion having a baffle layer configured to cover the user's mouth and at least part of the user's nose (**see fig. 1**). Therefore, it would have been obvious to one having ordinary skill of the art at the time the invention was made to modify Baumann's invention by providing a body portion having a baffle layer configured to cover the user's mouth and at least part of the user's nose as taught by Jackson so that the mask fits over the nose, mouth and chin of the wearer to form a snug fit with the face of the user as well as remove any bacteria from the breathing passage.

6. **As to claim 2**, Baumann substantially discloses a face mask wherein the channels are inter connected and are defined by the projections and the outer surface of the baffle layer, the channels having an orientation such that the fluid is directed laterally away from the point of impact of the fluid through the channels (**see column 4 lines 45-55 and figures 5a and 5b**).

7. **As to claim 3**, Baumann substantially discloses a face mask wherein the body portion has a first layer contacting the projections of the baffle layer; and the body portion has a third layer contacting the inner surface of the baffle layer (**see figures 4a and 4b**).

8. **As to claim 5**, Baumann substantially discloses a face mask wherein the projections are circular pillows (**see figures 5a and 5b**).

Art Unit: 3772

9. As to **claim 10**, Baumann substantially discloses a face mask wherein the plurality of projections extend from the outer surface of the baffle layer (**see figures 4a and 4b; see column 4 lines 10-20**).

10. As to **claim 12**, Baumann substantially discloses an apparatus that comprises a body portion **22** configured to be placed over a mouth and at least part of a nose of a user in order to isolate the mouth and the at least part of the nose of the user from the environment (**see fig. 3**) such that the air of respiration is drawn through the body portion (**see fig. 10b, col. 7 lines 35-43**), the layer having an outer surface facing away from the user when worn and an inner surface facing towards the user when worn (**see col. 4 lines 45-55**), the layer having plurality of projections extending therefrom (**see figs. 3, 4a and 4b**), the projections aiding in absorbing energy associated with fluid striking the body portion, wherein the projections define a plurality of channels on the layer configured for channeling fluid to different locations on the layer (**see col. 4 lines 45-55**) but does not disclose the body portion having a baffle layer configured to cover the user's mouth and at least part of the user's nose. Jackson discloses an apparatus that does disclose the body portion having a baffle layer configured to cover the user's mouth and at least part of the user's nose (**see fig. 1**). Therefore, it would have been obvious to one having ordinary skill of the art at the time the invention was made to modify Baumann's invention by providing a body portion having a baffle layer configured to cover the user's mouth and at least part of the user's nose as taught by Jackson so that the mask fits over the nose, mouth and chin of the wearer to form a snug fit with the face of the user as well as remove any bacteria from the breathing passage.

Art Unit: 3772

11. **As to claim 13**, Baumann substantially discloses a face mask wherein the body portion has an inner facing layer contacting the skin of the user when worn, an outer facing layer, and a filtration media layer disposed between the inner facing layer and the outer facing layer, wherein the layer with the plurality of projections is any one of the inner facing layer, outer facing layer, and filtration media layer **(see column 3 lines 55-65)**.

12. **As to claim 20**, Baumann substantially discloses a face mask wherein the projections are circular pillows **(see figures 5a and 5b)**.

13. **As to claim 25**, Baumann substantially discloses a face mask wherein the plurality of projections extend from the outer surface of the layer having the projections **(see figures 5a and 5b)**.

14. Claims **4, 15 and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Baumann et al. (US 6,354,296) in view of Jackson (US 3,490,447) further in view of Niemeyer (US 4,951,664).

15. **As to claims 4, 15 and 16**, Baumann/Jackson substantially discloses the applicant's invention as claimed; see rejection of claims 1 and 12 above with the exception of providing a first layer/additional layer stiffer than the baffle layer. Niemeyer discloses an apparatus that does provide a first layer/additional layer stiffer than the baffle layer. Therefore it would have been obvious to modify Baumann/Jackson inventions by providing a first layer/additional layer stiffer than the baffle layer as taught by Niemeyer in order to seal an expanding and contracting perimeter to the skin of the face.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nihir Patel/
Examiner, Art Unit 3772

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771